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Canada's New Government Toughens Anti-Money Laundering and Anti-Terrorist Financing Regime

The Honourable Jim Flaherty, Minister of Finance, today introduced a bill to strengthen the Proceeds of Crime (Money Laundering) and Terrorist Financing Act to ensure Canada continues to be a global leader in combating organized crime and terrorist financing.

"Canada's New Government will continue to be relentless in its battle against money laundering and terrorism financing," said Minister Flaherty. "One of the best ways of putting these criminals out of business is to starve them of the funds they need to finance their activities. Our proposed amendments will improve our ability to act decisively."

The proposed amendments in the bill will make Canada's anti-money laundering and anti-terrorist financing regime consistent with new Financial Action Task Force (FATF) standards. They also follow recommendations made in the 2004 Auditor General's Report and in a 2004 Treasury Board evaluation of the regime.

The proposed amendments include:

- Enhancing information sharing between the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), law enforcement and other domestic and international agencies.
- Creating a registration regime for money service businesses.
- Enabling legislation for enhanced client identification measures.
- Creating an administrative and monetary penalties' regime to better enforce compliance with the act.

The interim report of the Standing Senate Committee on Banking, Trade and Commerce is calling for tougher measures to deal with money laundering and terrorist financing, and this legislation and related regulations achieve that goal.

In addition, the Government has already ensured adequate funding for key partners by announcing, in Budget 2006, $64 million in additional funding over the next two years for FINTRAC, the RCMP and the Department of Justice.

In July, Minister Flaherty announced that Toronto had been selected as the permanent headquarters of the secretariat of the Egmont Group, an organization of 101 of the world's financial intelligence units, including FINTRAC. Canada's New Government will contribute $5 million over the next five years to help the secretariat get established.

For the first time ever, Canada has assumed the Presidency of the FATF. The FATF is an international body that develops and promotes policies to combat money laundering and terrorist financing.

Regulations needed to fully implement the regime will be developed over the coming months.

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Backgrounder on Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Introduction

Money laundering and the financing of terrorist activities are serious crimes that affect all Canadians. Criminals are constantly changing their tactics and finding new ways to evade the law. To remain robust, Canada's anti-money laundering and anti-terrorist financing regime must stay up-to-date. The proposed amendments will ensure Canada's regime remains consistent with revised international standards in this area while addressing areas of domestic risk.

The foundation of this regime was originally set out in the Proceeds of Crime (Money Laundering) Act, and then adapted to the changing global reality of terrorism and renamed the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) in 2001.

The legislation is designed to provide appropriate tools to law enforcement and meet international standards, while also respecting the personal privacy of Canadians and minimizing the compliance burden on financial intermediaries. To do so, in implementing the act a number of privacy safeguards have been put in place, such as the creation of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) as an "arm's-length" agency separate from law enforcement and intelligence bodies; criminal sanctions for unauthorized disclosure of information collected under the act; and requiring law enforcement to obtain a warrant to access more information beyond the information ordinarily disclosed by FINTRAC.

Effective measures fight organized crime and terrorism by targeting either the financial rewards from underlying crimes, such as drug dealing, prostitution and extortion, or by stopping the flow of funds to terrorist groups. In addition, a robust anti-money laundering and anti-terrorist financing regime serves to protect the integrity and reputation of Canada's financial system. An effective regime is critical to Canada's financial and physical security.

Money laundering is the process by which "dirty money," generated by criminal activities such as drug dealing, prostitution, human smuggling and extortion, is converted into assets that cannot be easily traced back to their illegal origins.

The PCMLTFA requires financial institutions and financial intermediaries[1] to comply with certain client identification, record-keeping, reporting and internal compliance measures. This includes reporting suspicious transactions, large cash transactions and international wire transfers to Canada's financial intelligence unit, FINTRAC.

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[1] Financial institutions and financial intermediaries include banks, trust and loan companies, life insurance companies, securities dealers and casinos.

International Context

As a founding member of the Financial Action Task Force (FATF), the international standard-setting body in this area, Canada has committed to implementing the FATF 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing.

The FATF updated its Recommendations in 2003 to ensure that they meet the evolving threat of money laundering and terrorist financing. For Canada's regime to be consistent with the revised FATF Recommendations, amendments to the PCMLTFA and its regulations are required. Canada's regime will be evaluated by the FATF in 2007.

Outline of Proposed Legislation

The bill proposes to enhance the provisions of the existing PCMLTFA by strengthening "know your client" standards; closing gaps in the regime; increasing compliance, monitoring and enforcement; and strengthening FINTRAC's intelligence function.

As a prelude to the bill, the Department of Finance issued a consultation paper entitled *Enhancing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime* in June 2005. Over 50 submissions from stakeholders were received, followed by further face-to-face consultations. As a result, the proposed bill contains amendments that seek to address industry concerns and minimize the compliance burden by tailoring, where at all possible, proposed new requirements to existing business practices.

The proposed legislation serves to meet Canada's international commitments to combat money laundering and terrorist financing while ensuring that our domestic regime remains robust and up-to-date. The key amendments to the PCMLTFA are:

- *Enhanced client identification and record-keeping measures for financial institutions and intermediaries*

The proposed amendments include requirements for reporting entities to undertake enhanced monitoring of high-risk situations, correspondent banking relationships and transactions by politically exposed persons. Banks, insurance companies, securities dealers and money service businesses would be required to take measures to identify and monitor the transactions of foreign nationals and their immediate family who hold prominent public positions.

- *The reporting of attempted suspicious transactions*

All reporting entities currently reporting suspicious transactions would be required to report suspicious attempted transactions to FINTRAC. This is the practice in other G7 countries and is consistent with FATF Recommendations.

- *Registration regime for money service businesses (MSBs) and foreign exchange dealers*

The proposed amendments would create a federal registration system for individuals and entities engaged in money service businesses or foreign exchange. FINTRAC would act as registrar and would maintain a public list of registered MSBs and foreign exchange dealers. These businesses are already covered by the PCMLTFA; however, given that this is an unregulated sector, the registry will assist FINTRAC in ensuring compliance with the act.

- *Enhancing the information contained in FINTRAC disclosures*

As recommended in the 2004 Auditor General's Report and at the behest of law enforcement, the proposed amendments enhance the information FINTRAC can disclose to law enforcement and security agencies on suspicions of money laundering or terrorist financing. This will increase the value of FINTRAC disclosures, ultimately leading to more investigations and eventual prosecutions.

- *Creating an administrative and monetary penalties regime*

Currently the act only allows for serious criminal penalties if the act is contravened. FINTRAC requires the ability to levy fines to deal with lesser contraventions in order to take a more balanced and gradual approach to compliance. The amendments will create an administrative and monetary penalties system, whereby fines can be applied for non-compliance.

- *Reintroducing requirements for legal counsel*

The Government is working with the legal profession, including notaries in Quebec, to finalize requirements for client identification, record-keeping and internal compliance procedures for legal counsel when they act as financial intermediaries.

This bill removes the obligation for legal counsel to file suspicious transaction reports or other prescribed transaction reports.

- *Expanding information sharing between federal departments and agencies*

Amendments would expand FINTRAC's ability to share information with the Canada Border Services Agency (CBSA), the Canada Revenue Agency and the Communications Security Establishment. In addition, FINTRAC will now be able to receive terrorist property reports under United Nations Act regulations.

Internationally, the enforcement of the anti-money laundering and anti-terrorist financing requirements would be strengthened by information-sharing provisions on compliance-related information between FINTRAC and its foreign counterparts on obligations applicable to the financial sector, and between the CBSA and its foreign counterparts on the enforcement of the cross-border currency reporting regime.

- *Technical amendments to improve the act*

A number of technical amendments are being proposed to improve the act by addressing inconsistencies between the French and the English versions and ensuring consistency between the PCMLTFA and related provisions in other acts, and to clarify existing provisions and correct section references. These amendments will help make the act easier to read and interpret.